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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,931

10/31/2003

David C. Nelson

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8945

7590

05/31/2006

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EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,931

Applicant(s)

NELSON ET AL.

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 4-9, 11 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Prosecution Application

The Request for Continued Examination (RCE) filed on 5/11/2006 under 37 CFR 1.114 based on parent Application No. 10/697,931 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Marotta (5,600,889).

Marotta discloses a pizza box (40) and lid support (26) in the embodiment of Figure 11 comprising a pizza box (40) retaining a pizza (46) and a lid support (26) placed in the pizza box. The lid supporting comprising a support platform (12) supported above the pizza by at least one support leg (30) and prevented a lid (44) of the pizza box from contacting the pizza, and a handle (14) having an edge extending downwardly and outwardly from the support platform which is considered equivalent to a cutting edge as claimed. The edge of the handle of the lid support of Marotta is inherently capable of being used as the cutting edge.

3. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Beck et al. (4,877,609; hereinafter Beck'609). Beck'609 discloses a pizza box (10, 12, 14) and lid support (30) comprising a pizza box (14) retaining a pizza (20) and a lid support (30) placed in the pizza

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box. The lid supporting comprising a support platform (40, 42) supported above the pizza by at least one support leg (60) and prevented a lid (12) of the pizza box from contacting the pizza, and the support leg having an edge (along portion 64 in Figure 2) extending downwardly and outwardly from the support platform which is considered equivalent to a cutting edge as claimed. The edge of the support leg of the lid support of Beck'609 is inherently capable of being used as the cutting edge.

4. Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Montesi (3,877,143). Montesi discloses a implement (10) comprising a support platform (14), at least one leg (12, 16) supporting the support platform above a support surface and a cutting edge (28, 30, 40, 42) extending downwardly and outwardly from the support platform toward the support surface (Figures 1-3). The implement of Montesi is inherently capable of being as a lid support. As to claim 5, the support platform (14) includes a grasping member such that the support platform serves as a handle to use the cutting edge as a cutting implement.

5. Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Fulton (1,612,367). Fulton discloses a implement (Figure 1) comprising a support platform (16, 17), at least one leg (the middle leg 15) supporting the support platform above a support surface and a cutting edge (an edge of the two outer legs 15) extending downwardly and outwardly from the support platform toward the support surface (Figure 1). The implement of Fulton is inherently capable of being as a lid support. As to claim 5, the support platform (16, 17) includes a

grasping member (17) such that the support platform serves as a handle to use the cutting edge as a cutting implement.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montesi (3,877,143) in view of Steck et al. (6,694,619; hereinafter Steck'619). Montesi discloses the implement (10) as above having all the limitations as claim except for the grasping member being a hole in the support platform. Steck'619 teaches a cutting implement comprising a cutting edge (1) and a grasping member is a hole (2, Figure 1). It would have been obvious to one having ordinary skill in the art in view of Steck'619 to modify the implement of Montesi so the grasping member comprises a hole to facilitate grasping during using the implement.

8. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fulton (1,612,367) in view of Montesi (3,877,143). Fulton discloses the implement (10) as above having all the claimed limitations except for the cutting edge (of the outer legs 15) being provided on a serrated support leg. Montesi shows a implement (10) comprising a support platform (14) and a serrated support leg 12, 16) having a cutting edge (28, 30, 40, 42) (Figures 1-3). It would have been obvious to one having ordinary skill in the art in view of Montesi to

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modify the implement of Fulton so the cutting edge is provided on a serrated leg to facilitate cutting.

Allowable Subject Matter

9. Claim 3 is allowed.

10. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to 5/11/2006 have been considered but are deemed to be moot in view of the new grounds of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
May 25, 2006



Luan K. Bui
Primary Examiner
Art Unit 3728